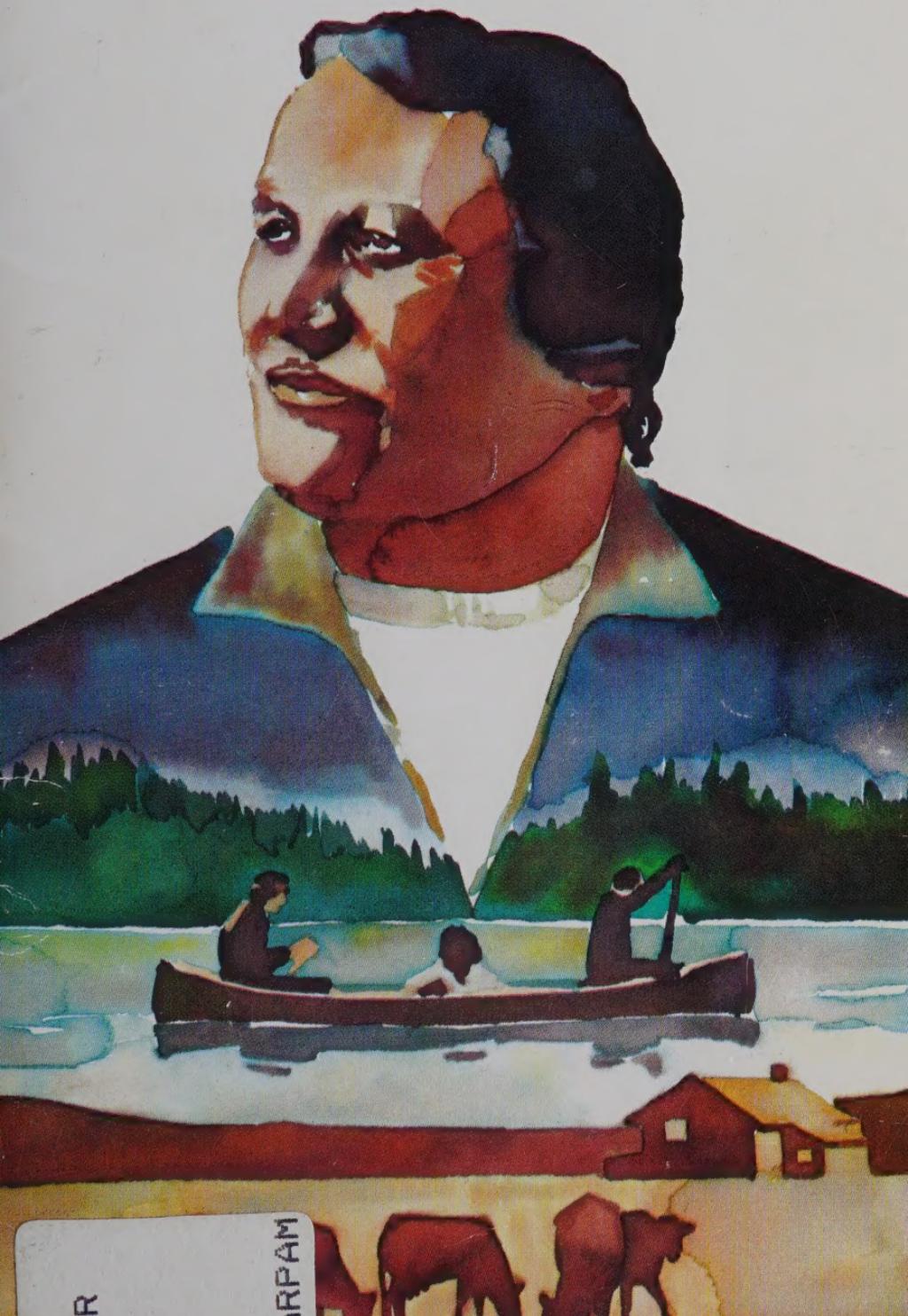




Province of
Saskatchewan

Indian Land Entitlements: Questions and Answers.



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Introduction

This pamphlet is the second in a series designed to provide Saskatchewan residents with background information on outstanding Indian Land Entitlements. The Province of Saskatchewan is currently meeting constitutional and legal obligations to supply land to the federal government to assist that government settle its debts owed to Indian Bands in this Province for over 70 years.

General

Q. During the past few years there have been periodic news items about Indian Bands in Saskatchewan and their "claims" to additional land. What is this all about?

A. These Bands are requesting that the Government of Canada complete the terms of Treaty agreements which are still outstanding, one of which is land. Under the Treaty agreements in the area which is now Saskatchewan, land allotments for Reserves were generally based on 640 acres for a family of five, or 128 acres per person. Not all Bands received their total allotment when the Reserves were originally set up.

Q. How far back do formal agreements with Indian Bands go?

A. The Indians of North America were, by and large, very co-operative towards European settlement right from the beginning. The early pilgrims would have starved had not East Coast Indians given them food and shown them how to utilize native plants and game.

The Hudson's Bay Company could not have grown and prospered without the goodwill and co-operation of Indian Bands. The fragile colonies established along the St. Lawrence and Atlantic Seaboard could have easily been wiped out by Indian attack or even Indian neglect. Instead, through the co-operation and help of the Indians, they prospered.

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Q. But history does record Indian uprisings and massacres.

A. There were always intertribal conflicts. When Europeans arrived their struggles were imported as well. Some tribes allied themselves to the European antagonists. Canadian history has often repeated the story of the French and their Algonquin allies, and the English and their Iroquois Association, together with the skirmishes and massacres that occurred.

History has not, however, clearly indicated that many of these massacres were inspired and abetted by the English and French as part of their larger struggles. Later, with the westward push of settlement, Indian Bands were forced to cede their lands or be destroyed. In the United States particularly, the uncompromising greed of prospectors, ranchers and settlers led to many bloody encounters.

Treaties and The Indian Act

Q. How did formal treaties come about?

A. European Governments have always recognized that the Indians had some rights to land even though explorers claimed it on behalf of their sovereign by the simple process of raising a flag on whatever shore they happened to find. As early as 1534, Pope Paul III issued a Papal Bull in which he decreed that Indians had interests in land which were to be recognized. The English and Dutch made "treaty" with tribal headsmen to establish settlements and to sanction the fur trade.

In 1763 a British Royal Proclamation stated that, although the land was taken in the name of the King and subject to his laws, the occupants did have a right to use the land. This right could only be extinguished through agreement between the occupant(s) and the King, who could then make grants for other uses. In other words, the Crown could only enter into Treaty with the Indians which bound both parties into

the explicit commitments. From 1763 onwards, the Treaty arrangement was used both in Canada and in the United States to secure the peaceable occupation of Indian lands for settlement.

Q. If Treaties were used for peaceable occupation, why was there so much difficulty between Indians and the settlers?

A. There was a fundamental difference in thinking. The Indians did not comprehend private ownership of land, but perceived an inherent right to use it for their needs. They only took what was necessary for their purposes, and were quite willing to share the land with others. Treaties were seen as a bond of friendship and recognition of this sharing principle. When the settlers began to apply European principles of land ownership and individual rights, it was felt that they were breaching the original Treaties, which in many cases they actually did. Nonetheless, a number of Treaties were concluded in the British colonies and later in the U.S. which formed the basis of these now existing in Saskatchewan.

Q. What is the background of the Saskatchewan Treaties?

A. After Confederation in 1867, Canada looked towards incorporating British Columbia and the great northwest into the Dominion. This was viewed as a way to prevent American encroachment into the western territories as well as opening up new markets for Eastern goods. The Government at that time wanted to ensure that the Indian population offered no resistance to this plan. Therefore, a series of Treaties were signed to allow peaceful occupation of the land.

Q. But why would the Indians give up their way of life without some type of struggle or shrewder dealings?

A. Partly through apprehension and misunderstanding, Indian leaders thought they were making a better bargain than they did. Several incidents made them realize that their world was vulnerable and that co-operation with the government would be the better course to follow. Disease, especially smallpox, had swept through Indian communities regularly from 1830 to 1871, reducing populations up to one half of their original numbers. The bison, through wholesale slaughter and possibly disease, had all but disappeared, taking their main source of food, clothing and housing. And the disturbing reports of the Indian wars in the United States suggested that having a government as a friend, was a far better situation than as an enemy. The work of missionaries and the Church, and the good relationship with the Hudson's Bay Company in the past, had suggested that government representatives would be fair and considerate in their dealings. The Indians realized that they were working at a disadvantage, but the negotiations appeared to be fair and straightforward.

Q. What did these Treaties say? Is there a record of them?

A. All the Treaties were recorded and are available. However, they were prepared in Ottawa, with little leeway given to the Commissioner attendant at the signing to make alterations. The Bands had no opportunity to call for major changes. They could only hope that any requests made outside of the Treaty would be acceptable. The Indians had to depend on translations, and misunderstandings easily crept in. The documents were prepared in complicated Victorian English which led to further confusion, even for government representatives.

The preamble to Treaty No. 1 reads in part: "Whereas all the Indians inhabiting the said country have pursuant to an appointment made by the said Commissioner. . . . to deliberate upon certain matters of interest to Her Most Gracious Majesty. . . . and to make a treaty and arrangements with them so that there will be peace and good will between them and Her Majesty, and that they know and be assured of what allowance they are to count upon and receive year by year for Her Majesty's bounty and benevolence."

Q. What did the Indians receive from the Treaties?

A. Initially, Indians received:

- (1) *Land in the form of a Reserve, equally 160 acres* for each family of five;*
- (2) *cash payment of \$3.00 per head;*
- (3) *no liquor on the Reserve;*
- (4) *annual Band payment of \$3.00 per head (later changed to \$5.00);*
- (5) *\$20 per year for each Chief and headsman, plus a suit of clothes every 3 years;*
- (6) *some minimal farm tools.*

* *Later Treaties increased the land allotment to 640 acres per family of five; annual payments increased to \$5.00 per head, and Chiefs received \$25 per annum. In Treaty No. 6, the "medicine chest" clause was included. This clause recognized a responsibility for the health and welfare of the Bands by the federal government.*

Q. How many Treaties were signed in Western Canada?

A. There were eleven signed between 1870 and 1921. Those affecting Saskatchewan were No. 2 (1871), which affected only a small portion in the southeast corner of the Province; No. 4 (1874) covering the portion south of the South Saskatchewan River, then southeasterly to about

Kamsack; No. 5 (1885) covering a small area along the Manitoba-Saskatchewan border; No. 6 (1876) included the central belt of the Province covering all land suitable for agriculture; and No. 8, including the Northwest corner around Athabasca, signed in 1899. No. 10 covering the rest of the Province was signed in 1906-7. Every Treaty was intended to accommodate a new phase in the country's development. None were signed at the request or for the benefit of the Indians.

Q. Were Reserves set up immediately after the Treaties were finalized?

A. It depended upon the circumstances. The first Treaties affected lands required for railroad construction and settlement and this led to early Reserve selection. The bison had disappeared, making the Indians dependent largely on the government for supplies. These would only be distributed from the Reserve. After the Riel Rebellion of 1885, the government was anxious to keep Bands segregated and controlled, for which the Reserve system was admirably suited. However, with the rapid influx of settlement after 1890, the government overlooked or ignored many Treaty land entitlements.

Q. What about the **Indian Act**; was it not provided for in the Treaties, to give further protection?

A. The **Indian Act**, first passed in 1876, was mostly an administrative document. It set up rules and procedures for the civil servant and was not too concerned with Indian rights or customs. The Bands were not consulted at any time on its authority or powers. **The Act**, in effect, made Indians wards of the state but did not offer protection of rights normally accredited to wardship.

Q. What were some of the restrictions in the Indian Act?

A. The right to vote was denied; no one could leave the Reserve without proper authority; local government within the Reserve was under the control of the Indian Agent; the inability to contract, or provide collateral without the authority of the Minister, were some of the restrictions included in **The Act**.

Q. Were there any benefits?

A. The federal government assumed responsibility for the education and welfare of Indians. However, the attitude implied in **The Act** was very paternalistic. **The Act** defines a “person” as anyone who is not described as an Indian. An Indian is a non-person, incapable of major decisions or responsibilities. Since he is a non-person, he must be controlled, have lower standards of living, education and social requirements. He must be monitored and directed.

Saskatchewan's Involvement in Land Entitlements

Q. The B.N.A. Act states that the responsibility for Indians and their lands is federal. How does Saskatchewan become involved?

A. When Canada took over Rupert's Land from the Hudson's Bay Company, it set up policies for survey and settlement of this area. When Saskatchewan became a province, Canada retained the administration of lands and resources to assure that settlement would not be interrupted. In 1930 a transfer of the remaining resources and land was made to the three Prairie provinces under the **Resources Transfer Agreement**. However, clause 10 of the Agreement stated that the provinces would make vacant Crown Land available to Canada, to assist Canada settle land entitlements which had not been settled.

Q. If the **Resources Transfer Agreement** was signed in 1930, why are land entitlements just coming to light now?

A. It appeared at the time that, except for those areas north of settlement, land entitlements were satisfied. However, research into Treaties after 1960 revealed that several Bands had not received their full quota of lands as provided under the Treaties.

Q. Why was this allowed to happen?

A. For various reasons. Indian Bands and the federal government could not agree on location and size of Reserves. A census of Indians was to be taken within the year after Treaty signing but these were never completed in some instances. Partial allocations were made, with remaining acreages overlooked and/or ignored. Because settlement problems were paramount and because Indians were on their Reserves with little opportunity to make protests except through their Indian agents, it was easy to overlook or ignore their position.

Q. Saskatchewan is using the Indian population of December 31, 1976 as a basis of determining settlements. What is the basis for this date?

A. The Treaties are open-ended. There is no fixed population date from which to calculate entitlements. Furthermore, the population figures at the time of Treaty signing are subject to error. Since there was a delay of 100 years in meeting the commitments to fulfill Treaty land entitlements, there should be some compensation for that delay.

Q. How much land is involved in outstanding settlements?

A. There are 14 Bands which have outstanding entitlements of land in Saskatchewan, amounting to approximately one million acres. Five of these Bands are in the north with entitlements totaling about 500,000 acres. About 120,000 acres are in the process of transfer to these northern Bands, and settlement of the remainder is progressing favourably. The situation in the South is much different because all the best land has been taken up and vacant Crown land is of little or no value.

Both governments have agreed to consider any Crown land on the condition that the present lessee, occupant, or user could be satisfied. In other words, the Bands and the federal government would assure the user that his interest would be recognized, and that he be either compensated or continue the use of the land for a reasonable length of time.

It is proposed that Canada would take the responsibility for compensation and resettlement of current users, since Canada is responsible for the failure to look after entitlements previously.

Q. What about renegotiations?

A. The federal government has suggested renegotiations of Treaty rights and even issued a study paper in 1969. The paper suggested that special status had not worked in favour of the Indians, and they should be accepted as ordinary Canadians with special help for a period to get them on an even par with other Canadians.

Q. Did the Indians accept this?

A. No. Their reaction was that, although special status did not have the influence that they originally hoped, the loss of

special status could have significant consequences. Their welfare would become a provincial responsibility, further segregating their influence. In most ways, they felt they would lose far more than they would gain.

Q. Are Manitoba and Alberta involved in similar Treaty land transfers?

A. There are outstanding entitlements in both of these provinces, since the same Treaties and land problems affected them.

Q. Will this be the end of selection in Saskatchewan?

A. There are several Bands who are claiming additional lands, but these have not been verified. It is possible that some additional outstanding entitlements may come to light, but it is not expected that the total will increase significantly.

Q. There have been newspaper reports about the return of certain lands formerly included in Reserves, now privately owned, to the Indians.

A. This is outside the legitimate land entitlement question and is strictly a federal matter. In the past, Indian Bands had surrendered a portion of their Reserves, which were subsequently sold to settlers. This procedure is provided for in the **Indian Act**. The monies received from sales are to be put in the Band fund, which is held and administered by the Department of Indian Affairs. An accusation has been made that some surrenders had been gained fraudulently, and therefore some land sales were illegal. Some Band members are now taking legal action and will ask the Courts to intervene. However, this aspect is not a part of the present land entitlement negotiations. Saskatchewan is not involved.

Treaty Land Use and the Future

Q. Where occupied Crown land is selected by Bands, such as a community pasture, where will farmers pasture their livestock in future years?

A. Bands which have selected pastures have stated that they will co-operate by continuing the pasture service during a transition period which must be negotiated to the general satisfaction of all parties concerned.

Q. What about other leased land?

A. No private leases would be approved for selection until satisfactory arrangements have been made with the lessee.

Q. Will Rural Municipalities be compensated for loss of revenue, since Indian Reserves do not pay taxes?

A. Indian Reserves are exempt from taxation and some individual municipalities could lose a portion of their tax base. However, municipalities are not responsible for services to Indian Reserves.

Q. Are Indian Bands making plans to put transferred lands to good use?

A. Several Bands have land use committees and are increasing agricultural production. It is their intention to maintain or increase agricultural development to its full advantage.

Q. What about hunting, fishing and trapping rights? Can there be negotiations on this aspect at the same time?

A. Although a part of the original Treaties, this is a separate question from land entitlements. It is desirable that the matter should be settled but it should not hold up the transfer of land entitlements.

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